

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MICHAEL E. SZLUHA,

Petitioner,

v.

TERRY ROYAL, *et al.*,

Respondents.

Case No. 3:25-cv-00114-MMD-CLB

DISMISSAL ORDER

**I. SUMMARY**

Pro se Petitioner Michael E. Szluha filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 and moved for the appointment of counsel. (ECF Nos. 5 (“Petition”), 1-5 (“Motion”).) The Court reviewed the Petition, deferred ruling on the Motion, and instructed Szluha to show cause as to why the Petition should not be dismissed with prejudice as time barred. (ECF No. 6.) Szluha timely responded. (ECF Nos. 7, 8, 9.) For the reasons discussed below, the Court dismisses the Petition and denies the Motion.

**II. BACKGROUND<sup>1</sup>**

On July 29, 2014 and July 30, 2015, the state court entered a judgment of conviction and amended judgment of conviction, respectively, following a jury trial, convicting Szluha of six counts of use of a minor in producing pornography, 17 counts of lewdness with a child under the age of 14, and one count of sexual assault with a minor under the age of 14. Szluha was sentenced to life in prison with the possibility of parole after 10 years for every count. Three of those sentences were ordered to be served

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<sup>1</sup>The Court takes judicial notice of the online docket records of the Eighth Judicial District Court (<https://www.clarkcountycourts.us/portal>) and Nevada appellate courts (<http://caseinfo.nvsupremecourt.us/public/caseSearch.do>).

1 consecutively, while the remaining sentences were ordered to be served concurrently.  
2 Szluha appealed, and the Nevada Supreme Court affirmed on November 13, 2015.

3 On December 20, 2016, Szluha filed a state habeas petition. The state court  
4 denied the petition as procedurally barred due to it being untimely filed. Szluha appealed,  
5 and the Nevada Court of Appeals affirmed on August 14, 2018. Remittitur issued on  
6 September 11, 2018.

7 On April 10, 2018, Szluha filed a second state habeas petition. On May 30, 2019,  
8 the state court denied the petition as procedurally barred, but, on October 1, 2019, the  
9 state court amended its order by deleting the procedural bar analysis and resolving the  
10 petition on the merits. Szluha appealed, and the Nevada Supreme Court found that the  
11 state court “erred to the extent it resolved the habeas petition on the merits without  
12 addressing the clearly applicable procedural bars.” The Nevada Supreme Court  
13 concluded that Szluha’s second state habeas petition was procedurally barred and  
14 without good cause, so it affirmed the state court order denying the petition. Remittitur  
15 issued on December 21, 2020.

### 16 **III. LEGAL STANDARD**

17 The Antiterrorism and Effective Death Penalty Act (“AEDPA”) establishes a one-  
18 year period of limitations for state prisoners to file a federal habeas petition under 28  
19 U.S.C. § 2254. The one-year limitation period begins to run from the latest of four possible  
20 triggering dates, with the most common being the date on which the petitioner’s judgment  
21 of conviction became final by either the conclusion of direct appellate review or the  
22 expiration of the time for seeking such review. See 28 U.S.C. § 2244(d)(1)(A). For a  
23 Nevada prisoner pursuing a direct appeal, a conviction becomes final when the 90-day  
24 period for filing a petition for certiorari in the Supreme Court of the United States expires  
25 after a Nevada appellate court has entered judgment or after the Nevada Supreme Court  
26 has denied discretionary review. See *Harris v. Carter*, 515 F.3d 1051, 1053 n.1 (9th Cir.  
27 2008); *Shannon v. Newland*, 410 F.3d 1083, 1086 (9th Cir. 2005); Sup. Ct. R. 13. The  
28 federal limitations period is tolled while “a properly filed application for State post-

conviction or other collateral review with respect to the pertinent judgment or claim is pending.” 28 U.S.C. § 2244(d)(2). But no statutory tolling is allowed for the period between finality of a direct appeal and the filing of a petition for post-conviction relief in state court because no state court proceeding is pending during that time. *See Nino v. Galaza*, 183 F.3d 1003, 1006-07 (9th Cir. 1999); *Rasberry v. Garcia*, 448 F.3d 1150, 1153 n.1 (9th Cir. 2006).

#### IV. DISCUSSION

Szluha’s direct appellate review concluded on November 13, 2015 with the Nevada Supreme Court’s affirmation of his judgment of conviction. As such, Szluha’s conviction became final when the time expired for filing a petition for writ of certiorari with the United States Supreme Court 90 days later, on February 11, 2016. The federal statute of limitations began to run the following day: February 12, 2016. The limitations period expired 365 days later, on February 12, 2017, making his instant Petition, which was transmitted to the Court on or about February 25, 2025, untimely by eight years.

Notably, Szluha is not entitled to any statutory tolling stemming from his state postconviction proceedings. Szluha filed first and second state habeas petitions, but they would only toll the federal limitations period if they were “properly filed.” The Supreme Court has held that if a habeas petitioner’s state post-conviction petition was rejected by the state court as untimely, it is not “properly filed” within the meaning of the statutory tolling provision of the AEDPA limitations period. *See Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005) (“Because the state court rejected petitioner’s PCRA petition as untimely, it was not ‘properly filed,’ and he is not entitled to statutory tolling under § 2244(d)(2).”); *see also Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (“[A]n application is ‘properly filed’ when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. These usually prescribe, for example, the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee.”). Szluha’s first and second state habeas petitions were not properly filed given that they were found to be untimely under state procedural rules.

1 In response to the Order to Show Cause, Szluha does not dispute the Court's  
 2 calculation of his AEDPA limitations period. Rather, Szluha contends that he is entitled to  
 3 equitable tolling due to: (1) his state habeas attorney abandoning him, which can be seen  
 4 by his state habeas attorney's admission that the late filing of Szluha's first state habeas  
 5 petition was his fault; (2) not receiving confirmation of the affirmation of the denial of his  
 6 second state habeas petition until March 19, 2021, when the Nevada Supreme Court sent  
 7 him copies of requested documents; (3) speaking with his state habeas attorney on the  
 8 phone on May 18, 2021 and being informed "that no one in the courts of Nevada would  
 9 help [him] and that [he] was going to die in prison" and that he could "give [the federal  
 10 courts] a try[;]" (4) his state habeas attorney failing to inform him of the need to file a  
 11 protective federal habeas petition after his first state habeas petition was denied and then  
 12 erroneously telling him that there were no time limitations to file his federal habeas  
 13 petition; (5) needing time to recover after the May 18, 2021 phone call with his state  
 14 habeas attorney due to giving "up hope of . . . ever getting his liberty back[;]" (6) spending  
 15 a few months putting together information about his case and then sending that  
 16 information to the Mayor of North Las Vegas, "Fair Trials" (a human rights organization),  
 17 the British Consulate, and other "officials in England[;]" (7) applying for a pardon through  
 18 the Pardons Board, (8) it being "nearly impossible" to make legal phone calls in prison  
 19 due to "other inmates . . . steal[ing] or break[ing] the cordless phone, hold[ing] the phone  
 20 hostage or steal[ing] batteries[;]" and (9) receiving "subpar treatment from prison staff due  
 21 to [his] sex offender status." (ECF Nos. 7, 8.)

#### 22 **A. Equitable Tolling Standard**

23 The Supreme Court has held that AEDPA's statute of limitations "is subject to  
 24 equitable tolling in appropriate cases." *Holland v. Florida*, 560 U.S. 631, 645 (2010).  
 25 However, equitable tolling is appropriate only if (1) a petitioner has been pursuing his  
 26 rights diligently, and (2) some extraordinary circumstance stood in his way and prevented  
 27 timely filing. See *id.* at 649. To satisfy the first element, a petitioner "must show that he  
 28 has been reasonably diligent in pursuing his rights not only while an impediment to filing

1 caused by an extraordinary circumstance existed, but before and after as well, up to the  
 2 time of filing.” *Smith v. Davis*, 953 F.3d 582, 598-99 (9th Cir. 2020) (en banc) (expressly  
 3 rejecting stop-clock approach for evaluating when petitioner must be diligent). To satisfy  
 4 the second element, a petitioner must show that the “extraordinary circumstances” were  
 5 the *cause* of his untimeliness. *See, e.g., Grant v. Swarthout*, 862 F.3d 914, 926 (9th Cir.  
 6 2017). In other words, a petitioner must show “that some external force caused his  
 7 untimeliness, rather than mere oversight, miscalculation or negligence.” *Velasquez v.*  
 8 *Kirkland*, 639 F.3d 964, 969 (9th Cir. 2011) (internal quotation omitted).

### 9 **B. Analysis of Equitable Tolling Arguments**

10 The Court finds that Szluha is entitled to equitable tolling up until March 19, 2021  
 11 when he received copies from the Nevada Supreme Court of the affirmation of the denial  
 12 of his second state habeas petition. *See Fue v. Biter*, 842 F.3d 650, 652 (9th Cir. 2016)  
 13 (holding that a petitioner’s lack of knowledge of a state court’s adverse decision on his  
 14 post-conviction appeal or habeas petition, if proven, would entitle him to equitable  
 15 tolling). Up until this time, taking Szluha’s allegations as true, Szluha’s state habeas  
 16 attorney had: (1) filed Szluha’s first state habeas petition late because he was busy  
 17 working on an unrelated death penalty case; (2) failed to inform Szluha of the need to file  
 18 his federal habeas petition so that such petition would be timely; (3) filed a baseless  
 19 second state habeas petition; and (4) failed to provide copies to him of the Nevada  
 20 Supreme Court’s decision. Given that Szluha’s state habeas attorney failed to fulfil his  
 21 basic duty of client representation, the Court finds that Szluha’s state habeas attorney’s  
 22 conduct was sufficiently egregious to warrant equitable tolling.<sup>2</sup> *See Doe v. Busby*, 661

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23  
 24 <sup>2</sup>Notably, Szluha’s state habeas attorney’s failure to adequately advise him  
 25 regarding his AEDPA filing deadline amounts to ordinary attorney negligence and does  
 26 not warrant equitable tolling. *See Frye v. Hickman*, 273 F.3d 1144, 1146 (9th Cir. 2001)  
 27 (“We conclude that the miscalculation of the limitations period by Frye’s counsel . . . do[es]  
 28 not constitute extraordinary circumstances sufficient to warrant equitable tolling.”).  
 Similarly, equitable tolling is not warranted due to Szluha’s “inability correctly to calculate  
 the limitations period” himself. *Rasberry*, 448 F.3d at 1154 (holding that “a pro se  
 petitioner’s lack of legal sophistication is not, by itself, an extraordinary circumstance  
 warranting equitable tolling”).

1 F.3d 1001, 1011 (9th Cir. 2011) (“Equitable tolling may be warranted in instances of  
2 unprofessional attorney behavior.”); *see also Luna v. Kernan*, 784 F.3d 640, 647 (9th Cir.  
3 2015) (“[A]ffirmatively misleading a petitioner to believe that a timely petition has been or  
4 will soon be filed can constitute egregious professional misconduct.”); *cf. Holland*, 560  
5 U.S. at 651-52 (“A garden variety claim of excusable neglect . . . does not warrant  
6 equitable tolling.”).

7       However, importantly, Szluha fails to make a meritorious argument for why he  
8 should be entitled to equitable tolling after March 19, 2021. For almost four years—from  
9 March 19, 2021 until February 25, 2025 when his federal habeas petition was finally  
10 filed—Szluha explains that he lacked adequate access to the phone and was treated  
11 unfairly by prison staff. While the Court acknowledges and appreciates that prison  
12 conditions can make filing a federal habeas petition tricky, the conditions highlighted by  
13 Szluha—either considered individually or collectively—are ordinary conditions of prison  
14 life and do not qualify as extraordinary circumstances warranting equitable tolling. *See*  
15 *Ramirez v. Yates*, 571 F.3d 993, 998 (9th Cir. 2009) (explaining that “[o]rdinary prison  
16 limitations” are “neither ‘extraordinary’ nor ma[k]e it ‘impossible’ for [a prisoner] to file his  
17 petition in a timely manner”). Turning to diligence during this time period, Szluha explains  
18 that was seeking assistance from non-court related entities and seeking a pardon. The  
19 correlation between pursuing these other avenues of relief and Szluha’s alleged diligence  
20 in pursuing federal habeas relief is unclear. There was nothing preventing Szluha from  
21 simultaneously seeking various forms of relief.

22       Finally, Szluha’s federal statute of limitations was equitably tolled until March 19,  
23 2021.<sup>3</sup> Szluha’s limitations period began to run the following day—March 20, 2021—and  
24 expired one year later, on March 20, 2022. Szluha filed his instant Petition on February  
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27       <sup>3</sup>Under this analysis, the Court assumes that Szluha expeditiously secured counsel  
28 to file his state habeas petition following his direct appeal, meaning he did not lose any  
time from his AEDPA clock between the conclusion of his direct appeal proceedings and  
the commencement of equitable tolling.

25, 2025, almost four years *after* his limitations period expired. Accordingly, the Court dismisses the Petition with prejudice as untimely.

**V. CONCLUSION**


It is therefore ordered that the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (ECF No. 5) is dismissed with prejudice as untimely.

It is further ordered that the motion for appointment of counsel (ECF No. 1-5) is denied.

It is further ordered that a Certificate of Appealability is denied, as jurists of reason would not find dismissal of the Petition for the reasons stated herein to be debatable or wrong.

It is further ordered that the Clerk of Court kindly: (1) add Nevada Attorney General Aaron D. Ford as counsel for Respondents;<sup>4</sup> (2) informally serve the Nevada Attorney General with the Petition (ECF No. 5), this Order, and all other filings in this matter by sending notices of electronic filing to the Nevada Attorney General's office; (3) enter final judgment, dismissing this action with prejudice; and (4) close this case.

DATED THIS 23<sup>rd</sup> Day of May 2025.

  
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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup>No response is required from Respondents other than to respond to any orders of a reviewing court.